

**Final Order Denying Refund: 01-20200145R
Indiana Individual Income Tax
For the Year 2019**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Illinois Resident was subject to Indiana individual income tax on wages paid by his Indiana employer during 2019 even though Illinois Resident claimed that he worked entirely outside Indiana that year.

ISSUE

I. Indiana Individual Income Tax - Indiana Source Income.

Authority: IC § 6-3-2-1(a); IC § 6-3-2-2(a); IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Income Tax Information Bulletin 33 (August 2008); Indiana 2019 IT-40 PNR Part-Year and Full-Year Nonresident Booklet, <https://www.in.gov/dor/6524.htm>.

Taxpayer argues he is not subject to Indiana income tax on income received from an Indiana employer because he is an Illinois resident and did not work in Indiana during 2019.

STATEMENT OF FACTS

Taxpayer is an individual residing in Illinois and working on behalf of an Indiana employer. Taxpayer filed a 2019 IT-40PNR (Indiana Part-Year or Full-Year Nonresident Individual Income Tax Return). On that return, Taxpayer reported that he had no 2019 income subject to Indiana income tax. As a result, Taxpayer sought a refund of approximately \$1,800 of Indiana tax previously withheld on his behalf by his Indiana employer.

The Indiana Department of Revenue ("Department") reviewed Taxpayer's return and increased the amount of Indiana taxable income to approximately \$38,000. The correction resulted in a reduction to the amount of refund originally claimed by Taxpayer. Instead of receiving the \$1,800 refund amount originally claimed, the Department refunded Taxpayer approximately \$600.

Taxpayer disagreed with the Department's adjustment to his 2019 return and the denial of the \$1,200 portion of the original \$1,800 refund amount. Taxpayer submitted a protest to that effect arguing that he was an Illinois resident and did not perform any work in Indiana during 2019. In his protest submission, Taxpayer requested a "[f]inal determination without a hearing." This Final Order Denying Refund results.

I. Indiana Individual Income Tax - Indiana Source Income.

DISCUSSION

The issue is whether Taxpayer has met his burden of establishing that the \$38,000 portion of his 2019 income was not subject to Indiana income tax and that the Department erred in denying a refund of tax withheld on his behalf by his Indiana employer.

The \$1,200 refund denial at issue here resulted from the Department's decision subjecting the \$38,000 portion of Taxpayer's 2019 income to Indiana income tax.

A. Taxpayer's Burden of Proof.

As a threshold issue, such tax assessments are *prima facie* evidence that the Department's claim for the unpaid

tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). "[E]ach assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009).

In order to meet the burden of proof, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

B. Taxpayer's Explanation and Argument.

Taxpayer argues that the error arose "from the fact that one of my employers [business name] of Washington, Indiana, withheld Indiana income tax and Daviess County income tax only because they are located in Indiana, regardless of where I worked and lived."

Taxpayer further explains that he is employed as a welder "and work[s] in various states across the Midwest." Moreover, during 2019 Taxpayer states he "worked zero days in Indiana" and that during all twelve months during 2019 he and his wife "were full-time residents of Illinois"

C. Reciprocity and Nonresident Indiana Income Tax.

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a).

The question then naturally arises as to what constitutes a nonresident's "income derived from sources *within* Indiana" *Id.*

(*Emphasis added*).

IC § 6-3-2-2(a) provides in part:

With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

- (1) income from real or tangible personal property located in this state;
- (2) income from doing business in this state;
- (3) income from a trade or profession conducted in this state;
- (4) compensation for labor or services rendered within this state[.]

Indiana has entered into a "reciprocity agreement" with a number of states including - for example - Kentucky. The agreement means that Kentucky residents pay Kentucky income tax on all their income even if a portion of that income is derived from an Indiana source; in turn, Indiana residents pay Indiana income tax on all their income even if a portion of that income is derived from a Kentucky source.

Income Tax Information Bulletin 33 (August 2008), 20071003 Ind. Reg. 045070639NRA, explains:

The withholding of income taxes is required for all nonresidents employed in Indiana, except for legal residents of states complying with Indiana's reciprocity statute, [IC 6-3-5-1](#).

Indiana has established reciprocity agreements with Kentucky, Michigan, Ohio, Pennsylvania, and Wisconsin concerning the collection of income tax from nonresidents employed in Indiana. These agreements provide that Indiana will not impose adjusted gross income tax on the salaries, wages, tips, and commissions earned by the legal residents of states with reciprocity who work in Indiana. Indiana residents who work in states with reciprocity will receive identical treatment from those states.

The IT-40 PNR instruction booklet explains further:

Income received from Indiana sources should be reported as Indiana income by nonresidents, except certain types of Indiana-source income that are subject to tax only by your state of residence at the time you receive it. Indiana 2019 IT-40 PNR Part-Year and Full-Year Nonresident Booklet, <https://www.in.gov/dor/6524.htm>.

D. Conclusion.

The Department is unable to agree that Taxpayer has met his statutory burden of establishing that the Department's decision, effectively imposing Indiana income tax on money earned from his Indiana employer, was not subject to Indiana tax. IC § 6-3-2-1(a) and IC § 6-3-2-2(a) require that non-residents pay tax on income derived from sources within Indiana such as Taxpayer's own employer. Although Taxpayer is a resident of Illinois and argues that he did not exercise his welding skills within this state, he worked for and was paid by the Indiana employer. It is reasonable for the Department to assume that an employee of an Indiana business worked in Indiana and that the income at issue was derived "from [a] source[] within Indiana." IC § 6-3-2-1(a). Taxpayer has provided no documentation supporting the argument that he did not work in Indiana during 2019.

In the absence of a reciprocity agreement with Taxpayer's state of residence, in the absence of any substantive evidence that he never worked in this state during 2019, and in the absence of any indication that Taxpayer paid tax on his Indiana source income to another state, Taxpayer - as with all Illinois residents - is required to pay Indiana income tax on income derived from an Indiana source.

Taxpayer has not met his statutory burden under IC § 6-8.1-5-1(c) of establishing that the Department's assessment was wrong.

FINDING

Taxpayer's protest is respectfully denied.

April 24, 2020

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